4. Program Framework

This section describes the proposed solution options for the development of a more functional water transfer market. Each solution option is intended to address one or more of the issues identified in Section 3. Since the CALFED Program is by definition *programmatic*, the solution options are not detailed, but are intended to convey a general direction and purpose. Collectively, they constitute a plan that provides direction and prioritization for implementation. The attributes of the plan are presented under the same three categories used to describe issues in Section 3.

4.1 OBJECTIVES GOVERNING THE DEVELOPMENT OF SOLUTION OPTIONS

The Water Transfer Program Plan is a framework of actions, policies, and processes to resolve the issues contained in the broad categories described in Section 3. Efforts over the past three years to resolve the issues and develop a workable framework have been guided by a set of general objectives. These objectives also will govern efforts over the next several years to implement the recommendations. The objectives of the Water Transfer Program are to:

1. Facilitate water transfers in a manner consistent with existing law.

2. Address the institutional, regulatory, and assurance issues that need to be resolved to provide for a more effective water transfer system.

3. Address the physical constraints that need to be resolved to provide for a more effective water transfer system, particularly cross-Delta transfers.

4. Encourage transfers that result in overall improvements in CALFED objectives for water supply reliability, ecosystem health, and water quality, and that have no significant re-directed impacts.

5. Develop a water transfer framework that seeks to avoid injury to other legal users of water, avoids or adequately mitigates adverse impacts that may occur, and publicly disseminates information on general transfer rules as well as specific water transfer proposals.

6. Promote and encourage uniform rules for transfers using state and federal project facilities and cross-Delta conveyance capacity.

7. Promote and encourage the development of standardized rules for transfers based on replacement with groundwater and other conjunctive use-type transfers, so that water transfers do not cause degradation of groundwater basins or impair the correlative rights of overlying users and historical groundwater levels are sustained or improved.

WATER TRANSFER CRITERIA

1. Water transfers must be voluntary.
2. Water market transactions must result in the transfer or exchange of water that truly increases the utility of the supply, not water that a transferor has never used or water that would have been legally available for downstream use in the absence of the transfer.
3. Water rights of all legal water users must not be impaired.
4. Transfers must not harm fish and wildlife resources and their habitats.
5. Transfers must not cause overdraft or degradation of groundwater basins, or impair correlative rights of overlying users.
6. Entities receiving transferred water should be required to show that they are making efficient use of existing water supplies.
7. Water rights holders (whether districts or individuals) must play a strong role in determining whether water to which they have a right is transferred.
8. The beneficial and adverse impacts on the fiscal integrity of the districts and on the economy of agricultural communities in source and receiving areas cannot be ignored.

The policy-level recommendations of the CALFED Program will be guided by these objectives and the criteria highlighted in the box. The criteria will continue to be used by CALFED agencies during their review and approval of any future water transfer proposals.

4.2 INTEGRATION OF SOLUTION OPTIONS

In Section 3, issues were individually described. This would tend to imply that solutions have to be individually developed to match each issue. However, several of the issues, especially the "resource protection" issues, are closely related. Thus, developing discrete solutions for related issues did not seem appropriate in all instances. CALFED chose to focus on an integrated solution where it seemed appropriate to help resolve several related issues rather than develop several independent solutions.

This integration worked especially well for the resource protection-related issues such as third-party socioeconomic impacts or area of origin protection. A couple of the CALFED recommended solutions cut across several of these issues by comprehensively addressing the underlying causes. Others, especially the technically oriented issues such as carriage

water or process streamlining, required a more individually tailored solution because of their unique qualities. These issues did not lend themselves to an integrated solution.

However, all of the recommendations in this section are integrally linked in an effort to improve the existing structure of the California water market (see Figure 4-1). For instance, actions undertaken to clarify and better define when water is transferable (see 4.5.1) are a necessary component that will allow the approval process to be streamlined (see 4.5.4). But, streamlining the approval process is also dependent on standardizing carriage water requirements (see 4.5.2) and reservoir refill criteria (see 4.5.3). Furthermore, third-party concerns are not addressed by simply streamlining an approval process, so the process must also include more disclosure of potential adverse impacts (see 4.4.2) and make all of this information more publicly available (see 4.4.1).

As a consequence of this linkage, each of the actions described on the following pages is needed in order to facilitate a more effective water market. One way to display this linkage is through an interactive web-site. Though this web-site is discussed as part of streamlined approval process (see 4.5.4), it is really much more than that.

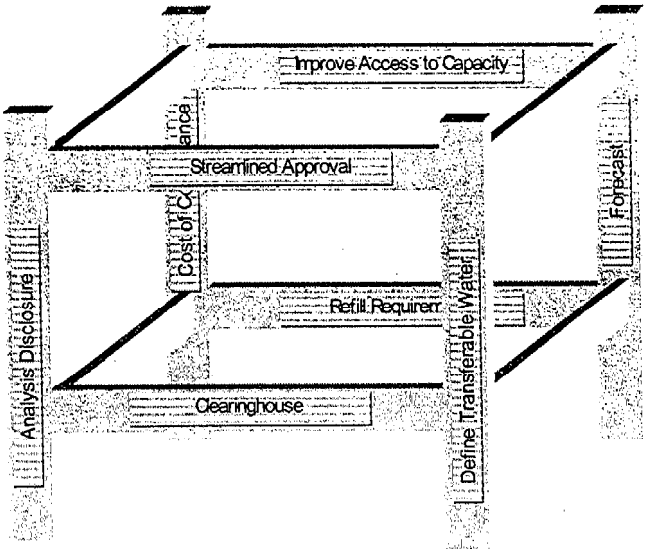

Figure 4-1. All recommended actions, policies and processes are interconnected into a structure designed to improve the existing water market.

This web-site will serve as an interim and long-term interface for stakeholders and the public with CALFED water transfer actions including: 1) streamlining the approval process, 2) defining transferable water, 3) providing public disclosure of proposed transfers (the clearinghouse concept), and 4)facilitating the sharing of water transfer related data, research, and assessment methodology.

ON TAP
CALIFORNIA WATER MARKET INFORMATION

The web-site, currently dubbed "On Tap", will initially include:

- an on-line transfer application process that will provide proponents with information regarding who has approval authority (USBR, SWRCB, DWR), what must be provided to the responsible agency, and what criteria the agency will use for its review and approval of a proposed transfer;
- a searchable database of all approved transfers (going back to the late 1980's and adding new transfers as they are approved);
- information regarding other CALFED Water Transfer Program actions.

More information regarding the web-site and its proposed development is included in Section 5.1 of this document.

4.3 FORMAT OF RECOMMENDATIONS TO RESOLVE ISSUES

The recommended solutions are presented in three broad categories. For each category, information regarding the issue(s) being addressed and the solution "type" is included. The solution type informs the reader that the solution is either:

- a discrete **action** to be taken (for example, pass legislation or improve the disclosure of available excess conveyance capacity),
- a **policy** to be formulated by a CALFED agency, or
- a **process** necessary to achieve final resolution. (These will occur during Stage 1 implementation of the Preferred Program Alternative.)

Since many issues are complex and require substantial investments of time and extensive stakeholder and agency interaction, the processes are a common type of solution, especially for the technically oriented issues. As described in the following subsections, it is anticipated that facilitated stakeholder and CALFED agency groups or technical teams will continue to work on resolving issues upon completion of the Programmatic EIS/EIR.

4.4 ENVIRONMENTAL, SOCIOECONOMIC, AND WATER RESOURCE PROTECTION SOLUTIONS

This portion of the framework has two primary solutions: (1) the formation of a water transfers information clearinghouse to disclose information and ensure public participation in the transfer review and approval process, and to perform baseline research and monitoring; and (2) coordination among CALFED members agencies (USBR, DWR, and SWRCB), with appropriate stakeholder input, to require, consistent with existing authorities, the preparation of water transfer impact analyses for specific water transfers. Other recommendations also are provided for issues not fully addressed by these solutions, including tracking of in-stream flow transfers and protection of area of origin and watershed priorities.

4.4.1 WATER TRANSFERS INFORMATION CLEARINGHOUSE

Addresses: All Section 3.3 issues (except 3.3.5) and Section 3.4.5
Recommendation Type: Action

CALFED heard from many stakeholders during 14 monthly meetings of the Bay-Delta Advisory Council's Water Transfer Work Group and numerous other interactions with the public. One message conveyed by many parties interested in water transfers is that the public has limited understanding of how water transfers work and what rules and procedures apply to transfers. This has led to disagreements over the application of law, misunderstandings about the impacts of specific water transfers, and concern that some transfers have caused significant, unmitigated adverse affects.

CALFED believes that improvements in the clarity and understanding of rules and procedures, the timely public disclosure of information on proposed transfers, and the availability of data and research can help ensure that the water market promotes responsible transactions.

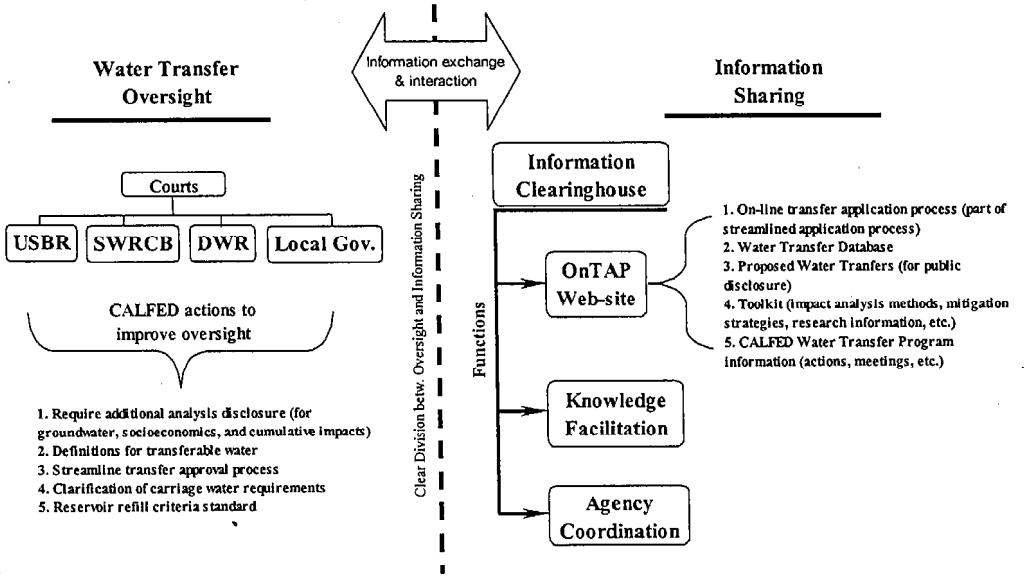

Figure 4-2. Separation of Oversight and Information Sharing
Interaction between oversight entities and the Information Clearinghouse is vital, but it is limited to the exchange of information

CALFED is therefore recommending the establishment and funding of a **non-regulatory** California Water Transfers Information Clearinghouse. The Information Clearinghouse would host, facilitate or perform some of the functions described below and would aid in resolving many of the economic, environmental, and resource protection issues discussed in Section 3.3 primarily by sharing knowledge and information. CALFED believes, as shown in Figure 4-2, that the interaction between information sharing and oversight is critical, but the functions are independent.

Principles

The Water Transfers Information Clearinghouse is based on the following principles:

Principle 1: Timely information sharing. The Information Clearinghouse will provide the information (described under Functions later in this paper) in the most timely and useful manner possible. For instance, upon receipt of a proposed transaction submitted to DWR, USBR, or SWRCB for review, the agency will forward it to the Information Clearinghouse for immediate posting. Other information, such as rules and procedures for review and approval of a transfer, environmental compliance requirements, research findings and other data will be maintained and updated as needed.

> Why: The intent of this tool is to better inform people, whether buyers, sellers, other agencies, third parties, or the general public, and do so in a timely fashion. Providing information in the most useful manner will ensure that this tool provides a benefit to all users and that it ultimately improves the way the water market operates.

Principle 2: Focus on the "Customer". The Information Clearinghouse should constantly adapt to the needs of those who most use it, providing a user-friendly source of water market information.

> Why: To be successful, the Information Clearinghouse should provide an improvement or advantage to a user over other methods of completing the same task. Buyers and sellers should want to use this tool to obtain information or to help them through the application process because it is more efficient than other methods. Third party interests should want to use this as a primary method to know what is being proposed and how to react. CALFED agency staff will need to continually adapt and manage the Information Clearinghouse to best serve those who use it.

Principle 3: Use existing laws and authorities. The Information Clearinghouse will disclose existing laws and authorities but will not initiate changes to these. If changes do occur through other forums, the Information Clearinghouse will reflect those changes accordingly.

> Why: Current law authorizes the USBR, DWR, and SWRCB to perform various oversight functions, including regulatory functions to approve, conditions or deny water market transactions. The Information Clearinghouse does not need new legal authorities to disclose information as it relates to oversight by these agencies.

Principle 4: Non-regulatory. The Information Clearinghouse will not be involved in the establishment or oversight of rules, policies or procedures. It is an information sharing tool only.

> Why: State and federal agencies and stakeholders are more likely to work openly and cooperatively together in an environment that is focused on information sharing. Also, an additional regulatory layer may inhibit water market transactions.

Principle 5: Not a broker. The Information Clearinghouse will not function as a broker. It will not assist bringing buyers and sellers together, nor will it purchase water for resale.

Why: CALFED heard from many stakeholders during the development of the clearinghouse concept. Some wanted the Information Clearinghouse to be an independent review and approval body; others supported the concept only if limited to information sharing. Concern was expressed by many third party interests (those not directly involved in the transaction, but potentially affected) that a brokerage function would influence the Information Clearinghouse staff to promote more transfers. CALFED believes that including a brokerage function would result in the loss of support for the overall Information Clearinghouse concept from source areas, if it were perceived that the Information Clearinghouse was an advocate for transfers.

Furthermore, several private companies are developing internet based web-sites to provide a "meeting place" for buyers and sellers. These are developed using the "e-bay" model which allows the private company to collect a fee for bringing buyers and sellers together. There may be little reason for CALFED or state and federal agencies to duplicate these efforts by providing a brokerage function.

Functions

The discussion that follows provides a general sense of the types of functions the Water Transfer Information Clearinghouse will facilitate or perform so that decisions could be made with all parties in possession of complete and accurate information. The primary Information Clearinghouse functions will be disclosing information; ensuring public participation; and performing or facilitating broad-based technical work, such as baseline data collection and analysis and coordinating regional groundwater/surface water modeling. Other functions listed would be secondary. All water transaction information shall be made publicly available through the On Tap web-site (see Section 4.2).

Function 1: Disclose application rules and procedures. The Information Clearinghouse will provide clear and understandable information on rules and procedures governing the review and approval of proposed water market transactions. This information will be generated by the appropriate agency (DWR, USBR, SWRCB) and brought together in a useful and understandable format.

Function 2: Public disclosure. The Information Clearinghouse will provide public notice on all proposed water market transactions and disclose the relevant information contained in the proponent's application or other material submitted to USBR, DWR, or SWRCB for review. This will occur upon receipt of the application by the reviewing agency. This function will also allow those initiating transactions that are not under the jurisdiction of these agencies to post, on a voluntary basis, information relevant to their transaction. The Information Clearinghouse will monitor the State Clearinghouse for CEQA documents to also alert interested parties about any transactions that are not subject to state/federal agency review and are not voluntarily posted by the proponent.

Function 3: Public Comment Forum and Procedure Disclosure. The Information Clearinghouse will provide a forum (if not otherwise provided) for public discussion and comment on specific proposed transfers. This may take the form of an e-mail site or electronic bulletin board that allows public comment to be taken, which would then be forwarded to the appropriate reviewing agency. The Information Clearinghouse would also provide information to the public regarding DWR, USBR, and SWRCB formal

comment procedures. This function would not supplant existing procedural requirements (i.e., CEQA or NEPA public comment procedures).

Function 4: Maintain Database. The Information Clearinghouse will establish and maintain a database of relevant water market transaction information. It will collect information on approved transfers of all types (except intra-district transfers) for purposes of developing baseline data, including but not limited to amount, method, timing, buyer, seller, purpose, and environmental compliance.

Function 5: Agency Coordination. The DWR, USBR, and SWRCB will coordinate their activities within the Information Clearinghouse to allow for standardized application, submission, review and approval processes, as appropriate. In addition, the agencies will work together to develop consensus on the application of federal and state statutes that govern the ability to market water.

Function 6: Facilitate research. The Information Clearinghouse will be the primary forum to disclose or coordinate the development of research and data (as it relates to water transaction issues) regarding such points as: cause/effect relationships of water transfer actions; groundwater/surface water interaction; groundwater levels and quality, groundwater recharge rates, and streamflow accretion and depletion rates. This type of data and research will either be posted by the Information Clearinghouse directly or linked to other data locations (i.e., to DWR or USGS databases or Universities).

Function 7: Provide access to useful tools and information. The Information Clearinghouse will facilitate the development of tools to aid proponents and decision makers with developing responsible water market transactions. These will be available for use on a voluntary basis and may include: a "toolbox" of potential mitigation strategies to help address impacts; "industry standard" impact assessment methods to aid in assessing potential socioeconomic, groundwater, and cumulative impacts; suggested monitoring strategies; and suggested methods to quantify the amount of water available to transfer. The Information Clearinghouse will also provide access to monitoring results (as available).

Function 8: Environmental Compliance Information. The Information Clearinghouse will provide information on environmental compliance requirements for various market transaction types, including information on Endangered Species Act, NEPA, and CEQA compliance, and formats and templates for use in writing environmental assessments.

Function 9: Public reporting of activities. The Information Clearinghouse will routinely report directly to CALFED. Annually, a report will be prepared discussing the role of the Information Clearinghouse, how well it is meeting its objectives, and what refinements are being implemented.

Function 10: User Forum. The Information Clearinghouse will be a forum for interaction between those who use the functions of the Information Clearinghouse and the oversight agencies. The intent is to make the Information Clearinghouse as useful to its "clients" as possible. This could be accomplished through workshops, "chat rooms", or other publicly accessible forums.

Other possible services that could be provided through an information clearinghouse include activities funded by the interested party or provided on a fee for service basis, **separate** from the other informational disclosure functions. For example:

- Assist local decision makers with technical analysis and appropriate methodology and data necessary to determine environmental and economic impacts of a proposed transfer. For example, for groundwater transfers this could include modeling data on impacts on groundwater or groundwater quality, effects on streamflow accretions and depletion, and estimates of recharge times. For surface water transfers, it might include analysis of water quality impacts and third-party economic impacts. This function would be purely informational, provided on a contractual basis to the entity wanting the information.

- Provide guidance to decision makers on ways to avoid, minimize, or mitigate environmental or economic impacts.

- Develop monitoring programs to determine impacts of transfers on groundwater conditions, water quality, agricultural production, and environmental conditions.

- Provide, at the request of the local agency or decision makers, advice or recommendations on the level of analysis desirable or useful for different types or priorities of transfers. Expertise available through the Information Clearinghouse may be available to local interests to provide assistance with understanding analysis results.

For performance or facilitation of the broad-based technical work, contracts could be established with the several entities such as the University of California, the Natural Resources Conservation Service, the U.S. Geological Survey, DWR, USBR, or another neutral party with appropriate expertise. The Information Clearinghouse would provide these baseline data and analyses to the transfer proponents, responsible decision-making agencies, and to the public for use in the review of a proposed transfer.

There are two basic alternatives for Information Clearinghouse organizational structure. One is that legislation would create a new legal entity or a new office within an existing agency to perform the Information Clearinghouse functions, with policy oversight by CALFED.

Another alternative is to construct the Information Clearinghouse under existing legal authorities. In this model, the Information Clearinghouse would not be "owned" by any one of the agencies with jurisdiction over water transfers. Instead, the Information Clearinghouse would be organized by a collaboration of funding and resources, including staff, from the CALFED agencies to carry out the functions described above. The inter-agency collaboration would be documented by a Memorandum of Understanding or Agreement among the USBR, DWR, and SWRCB, outlining how the agencies will work together to operate the Information Clearinghouse.

In either alternative, oversight of the Information Clearinghouse would occur through the CALFED Bay-Delta Program. Day-to-day functions of the Information Clearinghouse would be carried out by a Program Manager, with the Authority to hire staff or to request staff or resources, as needed, to support the Information Clearinghouse functions. There may also be an advisory panel, comprised of representatives from DWR, USBR, and SWRCB, and "public" members representing Information Clearinghouse "users". The advisory panel would

consult with the Program Manager and provide advice to CALFED on Information Clearinghouse functions and operations.

4.4.2 ANALYSIS DISCLOSURE REQUIREMENTS

Addresses: All Section 3.3 issues
Recommendation Type: Policy

CALFED member agencies (USBR, DWR, and the SWRCB), through a CALFED coordinated process, with input from stakeholder interests, will review and revise, if necessary, current policies and procedures to request additional analysis from water transfer project proponents. To the extent permitted under existing law, CALFED is recommending that the agencies require transfer proponents to provide analysis of the impacts of a proposed transfer in three areas (dependent on the characteristics of the proposal), in addition to CEQA or other required environmental analysis. There are three areas where more detailed analysis would be useful:

- Local groundwater impacts, including pumping levels, water quality, and recharge conditions;
- Cumulative impacts of specific transfers when viewed in the context of other transfers from the same source area; and
- Third-party socioeconomic impacts (i.e., lost employment opportunities, reduced county tax revenue).

This additional analysis will be for information and disclosure purposes only and would be used as the basis to approve, condition or deny a transfer only as otherwise permissible under current rules and procedures. Information would be disseminated through the Information Clearinghouse (see Section 4.4.1).

The level of detail in the analysis will vary with each type of transfer proposed. Some transfers have the potential for greater socioeconomic impacts and should emphasize this type of analysis, while others may result in more impact on groundwater resources.

Once developed and approved by the CALFED Policy Group and the CALFED member agencies (USBR, DWR, SWRCB), these additional analysis requirements will be incorporated into approval process streamlining activities described in Section 4.5.4.

The most likely application of these additional analysis requirements would arise in connection with transfers for which access to and use of USBR and DWR facilities are needed for storage or wheeling of transferred water or for transfers which require SWRCB approval.

Under Water Code Section 1810, the use of a water conveyance facility for transferred water "is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other in-stream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred." This language would appear to give DWR the authority to require that a transfer proponent

requesting use of SWP facilities provide analysis of the environmental, groundwater, and socioeconomic impacts of the proposed transfer for public disclosure purposes.

Under the federal Warren Act of 1911 (as modified by the drought relief legislation of 1989), the USBR (acting for the Secretary of Interior) is authorized to make federal facilities available for conveyance or storage of non-project water. This authority is limited to excess capacity not needed for project purposes. The language of Section 1 of the Warren Act of 1911 is not explicit as to the authority of the USBR to impose conditions on the use of excess capacity. When read broadly and in the context of the CVPIA and other applicable federal law, USBR probably has the authority to impose reasonable conditions on the use of its facilities. Arguably, it is within the range of reasonableness for USBR to require transfer proponents to provide analysis of the impacts of a proposed transfer on environmental, groundwater, and socioeconomic conditions in the source water area, similar to requirements of Water Code Section 1810. From a practical standpoint, permission to use either the state or federal facilities should be conditioned by the same analysis requirements.

Water Code Sections 1725 provides, as to temporary transfers (which must be submitted to the SWRCB), that the SWRCB must make a finding as part of a water transfer approval that the transfer will not injure any legal user of water and will not result in an unreasonable effect on fish, wildlife, or other in- stream beneficial uses. For a transfer of water which is surplus to the needs of the water users or the transferring agency or the use of which is voluntarily foregone by a water user, Section 386 also requires a finding that such a transfer will not unreasonably affect the overall economy of the area from which the water is being transferred. This language also would appear to give the SWRCB the authority to impose, as a condition of approval, that a proponent of this type of transfer provide analysis of the environmental, groundwater, and socioeconomic impacts of the proposed transfer.

Currently, the specific details of these proposed requirements do not exist. For instance, what level of analysis would satisfy each requirement? Answers to such questions will need to be developed during Stage 1 implementation, prior to such conditions being required of water transfer applicants. CALFED is committed to working with stakeholders to determine the appropriate level of analysis and will facilitate agency/stakeholder discussion during the early months of implementation.

4.4.3 SOLUTION PROCESS FOR IMPROVING ENVIRONMENTAL WATER TRANSFER TRACKING

Addresses: Section 3.3.5
Recommendation Type: Process

During the last several months, CALFED staff working with CALFED agency representatives developed the vision statement and objectives presented below. These will guide future stakeholder/agency discussions regarding the development of protocols for monitoring and tracking in-stream transfers, especially those proposed by petition for protection under Water Code Section 1707:

Vision: Ensure that a quantity of water transferred to an instream flow can be and then is delivered to the intended destination.